



MONTGOMERY COUNTY ETHICS COMMISSION

Steven Rosen
Chair

Kenita V. Barrow
Vice Chair

January 23, 2017

Advisory Opinion 17-01-001

An employee with more than 15 years of service with the Montgomery County Fire and Rescue Service (MCFRS) is a resident of a Maryland county other than Montgomery. He is considering whether to seek to campaign for the position of delegate to the Maryland House of Delegates.

The employee expects that he would use social media, websites, radio, print, brochures, public meetings, door knocking, and many other strategies to get his name, platform, and story out to the voters of his District. He expects that while doing this, he will be discussing his biography with a lot of people who do not know him. A major part of his story is his service and experience with MCFRS.

The employee inquires as to whether he may post or use images and video of him on the job for MCFRS. As he states in his request, “these pictures and videos could possibly have images of a uniform, county seal, county patch, fire apparatus, incidents around me, and career and volunteers around me.” He indicates that he would not use sensitive material in his campaign.

While he recognizes that he may not campaign while on duty, he also inquires whether he is restricted from answering campaign related phone calls in the same manner that he would be allowed to, on any given shift, answer personal phone calls, emails, and post to social media in an incidental manner that does not interfere with the fulfillment of responsibilities as an FRS employee.

He also inquires how press inquiries regarding an MCFRS employee running for the House of Delegates should be handled. Specifically, he asks whether inquiries relating to his MCFRS service would be a matter for the Ethics Commission or whether this would be a matter for the chain of command at MCFRS.

The Ethics Commission’s jurisdiction in providing advice extends only to the County’s Public Ethics Law. The Commission notes that a number of State and County laws, regulations and

policies regulate the intersection between an employee's political activities and the employee's responsibilities to the County as an employee.¹

The Commission observes that both State and County law provide that a County employee may participate in political campaigns, including running for elected office. The County Charter at Section 405 states:

No officer or employee of the County shall be prohibited from participating in politics or political campaigns. . . .

On the other hand, the Commission observes that State law, Md. Local Government Code Ann. 1-304 (2016), provides that an employee of a local governmental entity may not engage in political activity "while on the job during working hours".

In terms of the County's ethics law, while several provisions could be implicated depending on the circumstances, in general, the most relevant provisions to campaigning for office are found in County Code section 19A-14 concerning the misuse of the prestige of one's County office and position to advance private interests.² These provisions categorically prohibit using the prestige of office for private gain; using official County or agency title in connection "with any private enterprise" without the consent of the Chief Administrative Officer; and using a County facility, property, or work time for personal use, except in limited circumstances. While running for public office may be driven by a desire to serve the public, it, for purposes of the application of the Public Ethics Law, is a pursuit of private interests for those involved in the activity. Section 3-8 of the Personnel Regulations specifically addresses political activity of County employees and incorporates many of the concepts found in the Public Ethics Law in the context of political activity.³

¹ Federal law's Hatch Act prohibits State and local employees whose positions are one hundred percent financed by Federal funding from running for partisan political office. In addition, the Hatch Act prohibits, with respect to employees who work in connection with a program financed in whole or in part by federal loans or grants, the use of state or local office to support the candidacy, and asking subordinates to volunteer for the campaign or contribute to the campaign.

² Sec. 19A-14. Misuse of prestige of office; harassment; improper influence.

(a) Unless expressly authorized by regulation or as may be permitted under Section 19A-16, a public employee must not intentionally use the prestige of office for private gain or the gain of another. Performing usual and customary constituent services, without additional compensation, is not prohibited by this subsection.

(b) Unless expressly authorized by the Chief Administrative Officer, a person must not use an official County or agency title or insignia in connection with any private enterprise.

(c) A public employee must not use any County agency facility, property, or work time for personal use or for the use of another person, unless the use is:

(1) generally available to the public; or
(2) authorized by a County law, regulation, or administrative procedure.

....

(e) A public employee must not intimidate, threaten, coerce or discriminate against any person for the purpose of interfering with that person's freedom to engage in political activity.

....

³ 3-8. Political activity. (a) An employee may participate in political causes and campaigns on the employee's own time. (b) An employee must not use County equipment, supplies, or other property for a political cause or campaign. (c) An employee must not disrupt or interfere with the work of another County employee while participating in activities associated with a political cause or campaign. (d) A County employee must not direct, coerce, or otherwise

All of these State and County laws, including the County's ethics law, and the County's Personnel Regulations make clear that political activity, including running for office, is to be kept separate from the conduct of County duties, and that an employee is not to use County or agency title, County time, property, uniform or insignia, or vehicles in furtherance of political activities.

This means, with respect to the employee's inquiry, that it would be inappropriate for the employee to be conducting political activities while the employee is on County time. This would include answering campaign related phone calls, sending campaign emails or posting to social media while on the job. The employee is correct that County policy allows employees on a limited basis, to conduct minimal personal activities while on the job. *See*, for example, Administrative Procedure 6-1. Any such policy, though, does not extend to political activity being conducted during duty hours, which appears to be expressly prohibited by State law and County law and regulation. Therefore, any political activity must be conducted other than while in duty status, and County resources, such as internet access and phones, may not be used for these purposes.

The Commission believes that it would be appropriate for the employee in his capacity as a candidate to generally communicate facts regarding his government position and his accomplishments as an employee. The Commission has previously opined that the County's prestige of office provision does not preclude a public employee from listing accomplishments as a public employee in campaign literature while seeking elective office. *See* Advisory Opinion 06-04-004. While it would be an abuse of office to leverage the details of one's public service to advance a private business, the Commission believes that in the context of running for public office, what a candidate does in public service is a matter of public interest. Therefore, the employee as candidate can communicate publicly about his duties and accomplishments as a County employee. Nonetheless, the employee is not permitted to communicate confidential County information or communicate about the employee's County position for honoraria or compensation (other than the potential compensation from the position to which the employee seeks election). *See* Office of County Attorney Opinion dated December 6, 2002, Ethics Commission Advisory Opinion 02-011, December 20, 2002.

In addition, the ethics law precludes the employee from having images and videos created for the purpose of showing him "on the job" at MCFRS to advance his political campaign. The Commission believes that the creation of such materials could interfere with County operations,

pressure or obligate another County employee to contribute to a political cause or campaign or to perform work or provide services of any type to a political cause or campaign. (e) A County employee must not wear a County uniform, identification card, or other clothing or insignia that identifies the individual as a County employee while engaging in or attending a political activity of any kind, including a political rally, employee demonstration, caucus, campaign, fund raiser, and political speech, unless they have been directed to do so by a County supervisor. (f) A County employee must not use a County vehicle that is marked or identifiable as a County vehicle while engaged in political activities such as setting up a sign or attending a rally, caucus, promotional event, or fund raiser. (g) A County employee must not place a bumper sticker, decal, insignia, banner, or placard on County property or a County vehicle unless it is provided or authorized by the department. (h) A County employee must not wear an unauthorized pin, button, placard, or other article associated with a political cause or campaign while wearing a County uniform or while on duty. (i) A County employee may wear a County uniform, identification card, or other County clothing or insignia while voting at the employee's assigned polling place.

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100 MARYLAND AVENUE, ROOM 204, ROCKVILLE, MARYLAND 20850
OFFICE: 240.777.6670 FAX: 240.777.6672

and furthermore would risk involvement of the employee and others in the County in political activities that are prohibited by State and County law.

The Commission has previously determined that an employee could appear in uniform in a photograph on that employee's campaign website. *See* Advisory Opinion 10-06-008. Therefore, to the extent that an employee wishes to use an existing personal photograph (or a photograph in the public domain) of himself in uniform in connection with his candidacy, that would be permissible, as long as there is no suggestion or implication that the County or the MCFRS endorses the candidacy.

The employee also inquired as to how press inquiries regarding any campaign should be handled. Any press inquiries should go to the MCFRS or to the County's Public Information Office, and the employee should have no County role in handling these inquiries. The MCFRS and Public Information Office should consult with this Office or the County Attorney's Office regarding its handling of such issues.

The County Attorney's Office was consulted in connection with this Advisory Opinion.

For the Commission:



Steven Rosen, Chair